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In the Supreme Court of the United States

No. 336

OCTOBER TERM, 1959.

AHMED TAHIR,
Petitioner,

vs.

JOHN M. LEHMANN,
District Director,
Immigration & Naturalization Service,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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v.

JOHN M. LEHMANN,
District Director,
Immigration & Naturalization Service,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming the order of the United States District Court for the Northern District of Ohio, which had denied this petitioner's petition for review, and for an order reversing the order of deportation theretofore entered in this case.

OPINIONS BELOW.

The opinion of the Court of Appeals, set forth in the Appendix, *infra*, p. 11, is reported at 264 F. 2d 892. The memorandum opinion of the District Court (App. *infra*, p. 12) appears in 171 F. Supp. 589.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 23, 1959 (App., *infra*, p. 11). A timely petition for rehearing was denied on June 1, 1959. The jurisdiction of this Court is invoked under 8 U. S. C. 1251(a)(4).

STATUTES INVOLVED.

The Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, provides in pertinent part:

> "Section 241(a)(4), 66 Stat. 204, 8 U. S. C. (1952 ed.) 1251(a)(4):
>
> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> (4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial."

QUESTION PRESENTED.

This petitioner was found guilty in the Recorder's Court of Michigan in 1938 and the following entry was made by the Judge:

> "* * * convicted of having on the 11th day of June, 1938, committed the crime of breaking and entering a building (store) in the nighttime at the City of Detroit, County of Wayne, Michigan."

Does such entry of conviction, without a finding as to the intent with which such breaking and entering was done, constitute a case involving moral turpitude?

Our answer is, "No."

The Court did not answer this question.

STATEMENT OF FACTS.

This petitioner was ordered deported by the Board of Immigration Appeals, and the District Court at Cleveland, Ohio, Judge Weick presiding, upheld this order (p. 14). The law under which this deportation was ordered is Section 241(a)(4) of the Nationality Act of 1952. The deportation order is based on the section named herein because this petitioner was convicted twice after entry of crimes involving moral turpitude, to-wit: petit larceny and breaking and entering a store.

Petitioner is 64 years old and is a native and citizen of Turkey. He entered the United States at the Port of Providence, Rhode Island, in 1913. He has lived in the United States continuously since that time. He operates a store and a rooming house, from which he derives his livelihood, and has been so engaged for many years past.

He was convicted in Allegheny County, Pennsylvania, on September 16, 1919, for the offense of petit larceny, the charge being that he took and carried away money amount-

ing to the sum of $47.00. It appears that he was to pay the Court costs and serve a sentence of three months.

The other offense is alleged to have been committed on June 11, 1938, in Detroit, Michigan, where he was convicted in the Recorder's Court of Judge Van Zile and was sentenced to serve from 18 months up to 15 years. (p. 16.)

It is contended here that inasmuch as the Court did not convict this petitioner on count No. 2, the larceny count, and inasmuch as the finding of guilt on the first count did not include a finding *with the intent to commit any felony or larceny therein*, and only made a finding of guilty of "breaking and entering a building (store) in the nighttime," that it therefore does not follow that such a finding by a jury or Court under these circumstances was for a crime involving moral turpitude.

We claim that the District Court erred in affirming the order of deportation under Section 241(a)(4), the commission of two crimes involving moral turpitude.

We therefore contend that under the evidence in this case there are not two crimes involving moral turpitude and a deportation was not properly based on Section 241 (a)(4) of the Immigration and Nationality Act. It is also petitioner's contention that the appellate court erred in affirming the order of the District Court.

ARGUMENT AND LAW.

This petitioner was found guilty in the Recorder's Court of Michigan in 1938 and the following entry was made by the Judge:

> **"* * * convicted of having on the 11th day of June, 1938, committed the crime of breaking and entering a building (store) in the nighttime at the City of Detroit, County of Wayne, Michigan."**

Does such entry of conviction, without a finding as to the intent with which such breaking and entering was done, constitute a case involving moral turpitude?

Our answer is, "No."

The Court did not answer this question.

We contend that the Michigan conviction stating "breaking and entering a store," without a finding of the intent with which that breaking and entering was committed, is not an offense involving moral turpitude. Therefore, that only leaves the petit larceny as the offense that could have involved moral turpitude and makes only one offense involving moral turpitude, which is not sufficient under the law to order deportation. Furthermore, petit larceny, itself, is not an offense involving moral turpitude under all circumstances. See *Ex parte Edmead*, 27 F. 2d 438-439.

The Appellate Court made the following statement in its opinion:

> "After consideration of the record and the briefs and oral arguments of attorneys for the contending parties, we are of opinion that the order of the district court is correct and that its judgment should be affirmed for the reasons stated in the succinct and clear-cut memorandum opinion of the United States District Judge."

We see, then, that the Appellate Court based its opinion on the opinion of District Judge Paul C. Weick of the District Court for the Northern District of Ohio, and we quote from Judge Weick's opinion (p. 13):

> "The offense of breaking and entering a building in the night season, with the intent to commit larceny, universally known as burglary, was a felony under Michigan law and that it involves moral turpitude admits of no doubt. It was certainly a much more serious offense than the crime of larceny by force and arms which involves moral turpitude. The fact that no disposition was made of the second count in the indictment is not material here in view of the conviction on the first count."

In Judge Weick's opinion he based his finding solely on the entry of Judge Van Zile of the Recorder's Court of Detroit, Michigan. Unfortunately, however, Judge Weick misread Judge Van Zile's entry because in Judge Van Zile's entry it only appears that he found the defendant, this petitioner, guilty of the crime of "**Breaking and entering a building (store) in the nighttime,**" whereas, in Judge Weick's opinion he reads that but adds "*with the intent to commit larceny.*" Because of this mistake, the District Judge proceeded solely on the theory that this man was sentenced for breaking and entering a store in the nighttime with intent to commit a felony or larceny therein, which, of course, was just not the case.

The entire argument is on this question: Can we assume that the Court that found this man guilty in Michigan merely of breaking and entering a store in the night season intended really to also make a finding that such breaking and entering was with the intent to commit a felony or larceny? Our answer is that no one has the right to add anything to this judgment of the Michigan Court. If break-

ing and entering a store during the night season is an offense involving moral turpitude, then that is that. But if it isn't, then, of course, there is no case for deportation here.

It is believed by counsel that the statements of Government counsel in argument and brief caused the District Judge to err and repeat, in the same way that he repeated, that this "breaking and entering in the night time," was done with "intent to commit larceny," and it became the belief of the District Judge that this was really the finding of Judge Van Zile.

It is this error, so vital and so important in this case, that this Court should recognize because only in that manner can this Court protect this alien from an erroneous decision based on an erroneous statement of fact, which in itself is erroneous in law, and certainly, if permitted to stand, would be a miscarriage of justice.

The law in that regard is clear:

> "The *crime of larceny* is not included in breaking and entering." (Emphasis supplied.)
>
> *State vs. O'Bannion,* 171 La. 323; 131 So. 34.

On the question of moral turpitude:

> "Gravity of punishment imposed is not controlling."
>
> *U. S. vs. Corsi,* 63 F. 2d 742.

> "We cannot go behind the judgment of conviction to determine the precise circumstances of the crime for which the alien was sentenced."
>
> *U. S. vs. Day,* 54 F. 2d 336 (2nd Cir.); *U. S. vs. Day,* 16 F. 2d 328.

The District Judge made the error when he said in his opinion:

"That petitioner * * * was convicted of the crime of breaking and entering a building (store) at nighttime with intent to commit a felony, namely, larceny, and was sentenced to the state prison. * * *"

The District Judge overlooked the fact that the "petitioner" was convicted *only* of "breaking and entering a building (store) during the nighttime," and that the Court *did not find* that such breaking and entering of that building was committed "with intent to commit a felony, namely, larceny."

In the same opinion the Judge said:

"* * * the offense of breaking and entering a building, in the night season, with the intent to commit larceny, universally known as burglary, was a felony. * * *"

But what would a breaking and entry in the night season be *without the intent to commit larceny or any felony* therein?

The answer is found in many cases, as for example in Louisiana:

"The offense is not complete without the felonious intent, and **breaking and entering without this is only trespass.**" (Emphasis supplied.)

State vs. Meche, 7 So. 573, 42 La. Ann. 273, citing Abb. Law Dict.

In California:

"* * * the entry by any person, of any house, room or store with intent to commit a larceny, is declared to be burglary, *but the intent with which the entry is made, is a necessary element to constitute the crime.*" (Emphasis supplied.)

People vs. Phelan, 28 P. 855, 93 Cal. 111.

In Indiana:

> "Burglary is defined * * * as the breaking and entering in the nighttime into any * * * (store), barn * * * *with intent to commit a felony.* The breaking and entry must be done with the felonious intent." (Emphasis supplied.)
>
> *Barnhart vs. State*, 56 N. S. 212; 154 Ind. 177.

In every state of the union, including Michigan, the law of breaking and entering, to constitute an offense involving moral turpitude, it must be proven that same was accomplished with an intent to commit larceny or any felony therein. Breaking and entering, without a finding that it was done with the felonious intent, is only *trespass* and is not an offense involving moral turpitude. This petitioner therefore does not come under Section 241(a)-(4) and is not deportable, because in this case there remains only one offense involving moral turpitude, the offense of petit larceny in Pennsylvania in 1919.

The above quote from the Louisiana case, *State vs. Meche, supra,* is cited because the District Judge in his opinion, referring to the case at bar, said:

> "The offense of breaking and entering a building, in the night season, with the intent to commit larceny, universally known as burglary, was a felony. * * *"

We agree with what the District Judge said in his definition of the offense of burglary. The logical question, however, is what a breaking and entering in the night season would be *without a finding of intent to commit a larceny or felony* in connection with such breaking and entering. The above quotation from the Louisiana case is an answer and is supported by the California and Indiana cases quoted.

CONCLUSION.

It is believed that the District Judge erred because he mistakenly added the words to the finding of Judge Van Zile, which were not put down by Judge Van Zile, "*with intent to commit a larceny.*" It must be remembered that there was a larceny count in this indictment upon which Judge Van Zile did not make any finding at all. If the Judge had found that the intent of this petitioner in this breaking and entering was for the purpose of committing a larceny therein he would have so stated. Failing to do so, no one has the right to interpret his meaning by adding something that the opinion does not have.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY C. LAVINE,
1000 Marshall Bldg., Cleveland 13, Ohio,
Attorney for Petitioner.

APPENDIX.

OPINION AND ORDER OF THE COURT OF APPEALS.

(Filed Feb. 23, 1959.)

Before MARTIN, *Chief Judge*; MATHES and SHELBOURNE, *District Judges*.

This cause came on to be heard on the appeal of the petitioner, Ahmed Tahir, from denial by the district court of his petition to review an order of deportation entered pursuant to the Immigration and Naturalization Act.

After consideration of the record and the briefs and oral arguments of attorneys for the contending parties, we are of opinion that the order of the district court is correct and that its judgment should be affirmed for the reasons stated in the succinct and clear-cut memorandum opinion of the United States District Judge.*

ENTER:

(s) JOHN D. MARTIN,

United States Circuit Judge.

---

*PRINTER'S NOTE: The opinion of the District Court appears on the following pages 12 to 14.

MEMORANDUM OF DISTRICT COURT.

(Filed January 2, 1958.)

WEICK, J.:

This proceeding is to review an order of deportation issued under § 244(a)(4) of the Immigration & Nationality Act, 8 U. S. C. § 1251(a)(4).

Petitioner was represented by counsel at the hearing before the Special Inquiry Officer, who stated that he did not contest any of the allegations of fact contained in the order to show cause, and further that he did not, at that time, contest deportability.

Despite these admissions, the Special Hearing Officer nevertheless proceeded with the introduction of evidence and showed, by court records, (a) that petitioner, on September 27, 1919 in the Court of Quarter Sessions of the Peace of Alleghany County, Pennsylvania, pleaded guilty to an indictment charging him with taking, by force and arms, the sum of $47.00 from one Harry Lewis and was sentenced by the court to imprisonment in the workhouse for three months and to pay a small fine and the costs of prosecution and (b) that petitioner on August 16, 1938, in the Recorder's Court in Detroit, Wayne County, Michigan, was convicted of the crime of breaking and entering a building (store) at nighttime with intent to commit a felony, namely, larceny, and was sentenced to the state prison of Southern Michigan for an indeterminate term of not less than 1 year and 6 months, nor more than 15 years.

He had also been charged with larceny in the second count in the indictment, but no disposition was made of that charge.

In addition, petitioner was convicted in the Court of Common Pleas of Cuyahoga County, Ohio, in the January 1932 Term of that court of the charge of assault and bat-

tery and was sentenced to a term of six months in the workhouse.

When confronted with the court records at the hearing, petitioner admitted that he was the person involved therein.

The hearing was continued to permit petitioner to file an application for suspension of deportation under § 244(a)(5) of the Immigration & Nationality Act.

At subsequent hearings, it appeared that petitioner had, during the period of 10 years last past, been convicted on six occasions of gambling offenses and on that account was unable to establish good moral character which was an essential prerequisite in order to obtain relief of suspension of deportation. See § 101(f)(5) and § 244(e) of the Immigration & Nationality Act.

An appeal to the Board of Immigration Appeals was dismissed and this proceeding to review followed.

It is contended by petitioner (1) that the crime of breaking and entering a building in the night season with the intent to commit larceny does not involve moral turpitude and (2) that it is uncertain under which of the Michigan statutes the petitioner was convicted and sentenced.

The offense of breaking and entering a building, in the night season, with the intent to commit larceny, universally known as burglary, was a felony under Michigan law and that it involves moral turpitude admits of no doubt. It was certainly a much more serious offense than the crime of larceny by force and arms which involves moral turpitude. The fact that no disposition was made of the second count in the indictment is not material here in view of the conviction on the first count.

It appears from the record that subsequent to the conviction, the Michigan statute under which petitioner

was indicted and convicted, § 110.360 of the Michigan Penal Code, was given a new number, namely, § 28.305 under a recodification and renumbering of the statutes.

The record contains substantial evidence that petitioner was convicted of two crimes involving moral turpitude and is, therefore, subject to deportation under § 244(a)(4) of the Immigration & Nationality Act.

The argument that deportation works an injustice to an alien who has lived here for such a long period of time is one that should more properly be addressed to Congress, instead of the courts which have no discretion except to enforce the statutory enactments.

Nor can it be seriously questioned that petitioner's behavior, while living here as an alien, had fallen somewhat short of the expected norm.

Judgment may be entered for the respondent dismissing the complaint.

/s/ PAUL C. WEICK,

United States District Judge.

January 2, 1958.

ORDER OF JUDGMENT OF THE DISTRICT COURT.

(Filed January 7, 1958.)

This cause having come on for hearing on a petition for review and, upon consideration,

IT IS ORDERED that judgment is hereby entered for the respondent and the complaint herein is hereby dismissed at plaintiff's costs.

/s/ PAUL C. WEICK,
United States District Judge.

MITTIMUS—STATE PRISON, SOUTHERN MICHIGAN.

Case No. A-16892

THE RECORDER'S COURT OF THE CITY OF DETROIT

STATE OF MICHIGAN,
COUNTY OF WAYNE,
CITY OF DETROIT, SS.

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

AHMED TAHIR

Information for Breaking and entering a Building (store) in the night time with a count for Larceny in a Bldg.

Before Judge Van Zile.

At a session of the Recorder's Court of said City, held in and for said City, and the Court Room of said Court, on Tuesday the 16th day of August, A.D. 1938, Ahmed Tahir the defendant in above entitled cause, was waived trial

by a jury after a full hearing in his presence, and on his former plea of Not Guilty, convicted of having (on the 11th day of June, A.D. 1938) committed the crime of breaking and entering a building (store) in the night time, at the City of Detroit, County of Wayne, Michigan.

And upon the said conviction, the said Court, at a session thereof, held as aforesaid, did, on the 24th day of August, A.D. 1938, adjudge and determine that the said Ahmed Tahir, who is now of the age of 40 years should be committed to the State Prison of Southern Michigan, in the County of Jackson, and therein safely kept and employed according to the laws thereof, for the period of not less than one year and six months, from and including this date to fifteen years.

STATE OF MICHIGAN,
COUNTY OF WAYNE,
CITY OF DETROIT, SS.

Court makes no recommendation. Statutory maximum penalty is fifteen years.

I, PERCY L. MONTEITH, Clerk of the Recorder's Court of the City of Detroit, do hereby certify that the foregoing is a correct abstract from the minutes of said Court in the above entitled cause, of the conviction and sentence of Ahmed Tahir.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, this 25th day of August in the year of our Lord one thousand nine hundred and thirty-eight.

PERCY L. MONTEITH,
Clerk.

(Certification of copy omitted.)

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 336

AHMED TAHIR, PETITIONER

v.

JOHN M. LEHMANN, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11) is reported at 264 F. 2d 892. The memorandum of the district court (R. 18–20) is reported at 171 F. Supp. 589.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 1959 (R. 27, Pet. App. 11). A petition for rehearing was denied on June 1, 1959 (R. 45). The petition for a writ of certiorari was filed on August 22, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the information and sentence imposed by a state court may be considered in deportation proceedings to determine whether a conviction for breaking and entering in the nighttime was a conviction for burglary rather than one for trespass.

STATUTE INVOLVED

Section 241(a) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U.S.C. 1251(a), provides in pertinent part:

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * *
>
> (4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;
>
> * * * * *

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Sixth Circuit which affirmed the judgment of the District Court for the Northern District of Ohio sustaining an order of deportation.

Petitioner, a citizen of Turkey, was ordered deported as an alien who, twice after entry, had been convicted

of crimes involving moral turpitude.[1] One conviction was for petit larceny in 1919. The other is the conviction at issue here. It occurred in 1938 in the Detroit Recorder's Court when petitioner was charged in an information with violations of Sections 110 and 360 of the Michigan Penal Code, *i.e.*, burglary and larceny. The burglary charge recited that, with respect to a named jewelry store, petitioner "did break and enter with intent to commit a felony, to wit: larceny therein;" (R. 8). After trial he was found guilty, and the state mittimus imposing a sentence of imprisonment for eighteen months to fifteen years reads in pertinent part as follows (R. 10):

> * * * Ahmed Tahir * * * on his former plea of Not Guilty, [was] convicted of having (on the 11th day of June, A.D. 1938) committed the crime of breaking and entering a building (store) in the night time, at the City of Detroit, County of Wayne, Michigan.
>
> * * * * *
>
> Court makes no recommendation. Statutory maximum penilty is fifteen years.

Petitioner argued before the administrative authorities and the courts below that, since the mittimus did not contain a recital that the breaking and entering was with intent to commit a felony, his conviction

---

[1] Petitioner was found ineligible for suspension of deportation because of convictions for gambling offenses prior to and during the ten-year period during which he had to establish good moral character (R. 12, 17). See Section 101(f)(5) of the Immigration and Nationality Act.

must be deemed one for a simple trespass, and not for a crime involving moral turpitude. Both the administrative bodies and the lower courts rejected this contention and found that petitioner's Detroit conviction was for burglary.

ARGUMENT

In this Court, petitioner renews the argument that his conviction cannot be deemed one for burglary (*i.e.*, breaking and entering with intent to commit a felony) since the record of conviction and sentence does not contain a finding that the breaking and entering in the nighttime was done with intent to commit a felony. He argues that it was error to go beyond the face of the conviction and look to the information in order to determine whether he was convicted of burglary.

It is apparent, however, on the face of the sentence, that petitioner's conviction was for burglary. The judgment of the court was that petitioner be committed to imprisonment for from eighteen months to fifteen years for breaking and entering in the nighttime. The judge stated that the maximum penalty under the statute was fifteen years. At that time, of all the sections of the Michigan Penal Code dealing with breaking and entering, C.L. 1929, Chapter XVI, §§ 110–116, only § 110 (breaking and entering in the nighttime with felonious intent) provided for a maximum sentence of fifteen years.[2] We note, moreover,

[2] The words of the statute have remained unchanged since 1929. See C.L. 1929, § 16948, reenacted as § 17115-110 by the legislature in 1931 by Act No. 328, § 110, Pub. Acts 1931 (Stats.

that Michigan did not impose criminal penalties for mere unauthorized entries into private places. The trespasses that were made criminal relate to invasions of public land or injuries to property while trespassing, *e.g.*, cutting trees. See §§ 546–551, Mich. Penal Code.[3] Petitioner's contention that he was convicted of mere breaking and entering is impossible to sustain (a) because there was no such crime, and (b) because the reference to the statutory maximum of fifteen years shows that he was convicted of the offense described in § 110.

At the very most, the omission in the mittimus of a finding as to intent left an ambiguity to be resolved. Under settled principles, ambiguities on the face of a judgment may be explained by resort to the pleadings. See *National Foundry* v. *Oconto Water Supply Co.*, 183 U.S. 216, 234. This was the ruling in the very case on which petitioner relies, *United States ex rel. Zaffarano* v. *Corsi*, 63 F. 2d 757 (C.A. 2). There, the defendant was convicted of assault in the second degree by a New York court. The Second Circuit

---

Anno. § 28.305). The present text, contained in § 28.305, Mich. Stats. Anno., reads as follows:

SEC. 110. Any person who shall break and enter in the nighttime with intent to commit any felony, or any larceny therein, any dwelling house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat or ship, railroad car or any private apartment in any of such buildings, shall be guilty of a felony, punishable by imprisonment in the state prison not more than fifteen [15] years.

[3] All six sections dealing with criminal trespasses on private land are designated as misdemeanors. § 28.772, Mich. Stats. Anno. (C.L. 1929, § 16589 at the time of petitioner's conviction) fixes the punishment for a misdemeanor at 90 days of imprisonment or a $100 fine.

concluded that one of the five variations of second degree assault did not necessarily involve moral turpitude and, since a copy of the indictment was not before the court, it felt it could not uphold the defendant's deportation. Yet, the court stated (63 F. 2d at p. 758):

> It is quite possible, however, that, if the indictment had been before them, it would have disclosed that the crime of which the relator was convicted did involve moral turpitude.

And it further explained (63 F. 2d at p. 759):

> * * * neither the immigration officials nor the court reviewing their decision may go outside the record of conviction to determine whether in the particular instance the alien's conduct was immoral. And by record of conviction we mean the charge (indictment), plea, verdict, and sentence. The evidence upon which the verdict was rendered may not be considered, nor may the guilt of the defendant be contradicted. * * * [i]t is the specific criminal charge of which the alien is found guilty and for which he is sentenced that conditions his deportation, provided it involves moral turpitude.

Petitioner has confused the line of cases holding that a deportation hearing officer may not go behind a conviction to determine the circumstances attending the commission of a crime with the issue here, *i.e.*, what documents may be considered to determine the offense for which conviction has been had. For purposes of determining whether the conviction in this case was for burglary or trespass, it was plainly proper, as the *Zaffarano* case indicates, to examine the

entire judgment roll—indictment, plea, verdict and sentenc

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
MALCOLM R. WILKEY,
Assistant Attorney General.
BEATRICE ROSENBERG,
DAVID S. RITTER,
Attorneys.

SEPTEMBER 1959.

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